

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 600 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ASANDAS POHUMAL TIKMANI

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 4
MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. The petitioner in this petition under Article 226 of the Constitution of India has challenged the legality and validity of the order of detention dated 1st January 2000 passed against him by the learned District Magistrate, Junagadh District, Junagadh under subsection (2) of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980. In the grounds of detention supplied to the detenu on the same day, it is stated that the kerosene is declared as an essential article under section 2 of the Essential Commodities Act, 1955 by the Central Government; that under the provisions of section 3 of the Act of 1955, the Gujarat Government has issued Gujarat Essential Articles (Dealers) Order, 1977 and the Government has issued Kerosene (Restriction on use and Fixation of Price) Order, 1993, both of which are in force. It is further stated that the blue coloured kerosene is essential article under the Order of 1993 issued by the Central Government and as per the provisions of Order 8 of the said Order, the State Government has separated the controlled kerosene from imported white kerosene for the public distribution. This essential article is also included under the provisions of Order 2(8) of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and particularly in Schedule 2 and without authorised licence, such blue coloured kerosene cannot be purchased or sold; that for the maintenance and supply of said blue coloured kerosene which is an essential article and to prevent the detenu from indulging in any illegal activity and frustrating the provisions of other laws/orders, the detention order is passed against the detenu. In the impugned order of detention, the detaining authority has recorded an opinion that to prevent the petitioner- detenu from acting in any manner prejudicial to the maintenance and supply of blue kerosene, an essential commodity, it is necessary to pass the order of detention under subsection (2) of section 3 of the Act.

2. This petition can be disposed of on the first contention advanced by the learned advocate appearing for the petitioner regarding unexplained delay in considering the representation of the detenu. Therefore, it is not necessary for me to refer to the grounds of detention stated in the order.

3. In paras 17 and 18 of the petition, the petitioner has contended that he had made a representation dated 28th January 2000 to the State Government for revocation of the order of detention and requested to send the English translation of his representation and parawise remarks to the Central Government immediately. However, the said request has not been considered by the authority concerned and the representation has not been considered expeditiously. Mr. Patel, learned advocate for the petitioner submits that by not considering the representation of the

petitioner expeditiously, the authorities have violated the fundamental right as enshrined under Article 22(5) of the Constitution, of the petitioner of making an effective representation.

4. On behalf of the State Government, Mr. G.K.Rathod, Under Secretary, Food and Civil Supplies & Consumers' Affairs Department, Sachivalaya, Gandhinagar has filed an affidavit-in-reply. In para 4 of the same, he has dealt with the averments of the petitioner in para 17 of the petition wherein he has tried to explain the contention regarding delay in considering the representation. Reading the said affidavit, it is clear that the representation dated 28th January 2000 was received by the General Registry on 1st February 2000 and the Special Branch of the Department received the same on 2nd February 2000. The Assistant of the Special Branch prepared the file on 3rd February 2000 and sent the same to the Under Secretary and the Under Secretary cleared the file and sent it to the Secretary who also cleared the file and sent it to the concerned Minister. The concerned Minister, on 4th February 2000, rejected the representation which was communicated on 7th February 2000. Para 5 of the said affidavit deals with the averments made in para 18 of the petition and it has been pointed out that the State Government sent the representation along with its English translation and parawise comments to the Central Government on 15th February 2000 and, therefore, there is no question of violation of fundamental rights under Article 22(5) of the Constitution of India.

5. On behalf of the respondent no.3- Union of India, Mr. R.C.Dhankar, Under Secretary, Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi has filed a counter affidavit. In para 4, it has been pointed out that "As regards contentions made in paras 18 and 23 of the petition, it is submitted that a representation dated 1.2.2000 made in Gujarati language by the detenu was received in this Department on 2.2.2000 through the jail authorities vide their letter dated 1.2.2000. English version and parawise comments on the representation were called for from the State Government vide telegram dated 3.2.2000. Parawise comments on the representation were received on 11.2.2000 vide State Government's letter dated 9.2.2000; the English version was not found enclosed along with the letter. The State Government was requested to provide the English version vide Fax sent on 15.2.2000. English version of the representation was received on 18.2.2000 vide State Government's letter dated 9.2.2000. After considering

the representation along with parawise comments and other relevant records, the same were rejected by the Competent Authority in the Central Government on 25.2.2000. The decision of the Central Government was conveyed to Superintendent, Sabarmati Jail, on 25.2.2000 by telegram with a direction to convey the same to the detenu. The State Government was also informed simultaneously on the same day. Thus, the representation of the detenu was considered by the Central Government as expeditiously as possible. "

Reading the aforesaid affidavits, it appears that though the State Government decided the representation of the detenu without any undue delay, however, has taken its own time in sending the English translation and parawise comments on the representation to the Central Government. Reading the affidavit of Shri G.K.Rathod, it is clear that the same were sent on 15th February 2000, even though the petitioner had specifically requested the authorities to send the English version of the representation and parawise remarks to the Central Government immediately. Even though the Central Government received the representation of the detenu which was in Gujarati on 2nd February 2000, English version and parawise comments on the said representation were called for on 3rd February 2000 and instead of complying with both the said requests, only parawise comments on the representation were sent on 9th February 2000 which were received on 11th February 2000. Therefore, on 15th February 2000, the State Government was again requested to provide the English version vide Fax message and the said English version was received by the Central Government on 18th February 2000 vide State Government's letter dated 9th February 2000.

6. The aforesaid correspondence would show that the State Government, even though was under an obligation to send the English version as well as parawise comments immediately as requested by the detenu, no sooner the same was received i.e. on 2nd February 2000, however, nothing was done till 9th February 2000 when they only sent parawise comments on the representation. It is only after they received the Fax message sent by the Central Government on 15th February 2000 that the English version was supplied by forwarding letter dated 9th February 2000 by the State Government and the same was received by the Central Government on 18th February 2000. This would go to show that the representation of the detenu is taken in a very casual manner. The State Government could have sent the English version as well as parawise comments as requested by the detenu immediately without wasting a day

when they had received the representation on 2nd February 2000. The delay from 2nd February 2000 to 9th February 2000 has not been explained in the affidavit. There is also no explanation as to why on 9th February 2000, only parawise remarks were sent and not the English version. The Central Government is also equally responsible for not deciding the representation expeditiously. Even though the Central Government received the English version and parawise comments on the representation on 18th February 2000, upto 25th February 2000, no decision on the same was taken. Mrs. Dawawala, learned advocate appearing for the Central Government pointed out that 19th and 20th being closed holidays being Saturday and Sunday, it was not possible for the authorities to decide the representation. In the submission of the learned Counsel, the authorities took the decision on the representation within four days and, therefore, it cannot be contended that there was any delay on the part of the authorities in taking decision expeditiously.

This submission of the learned Counsel cannot be accepted for the simple reason that the authorities are under an obligation to consider the representation without any delay when the liberty of a person is at stake. Supreme Court, in the case of Harish Pahwa Vs. State of U.P., AIR 1981 SC 1126 has ruled that:

" the representation made by a detenu has to be considered without any delay. The Supreme Court does not look with equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done, the detention has to be declared unconstitutional. "

In the case of Gazi Khan Vs. State of Rajasthan, AIR 1990 SC 1361, the fact was showing that there was an unexplained delay of 7 days in considering the

representation of the detenu and the Supreme Court found that the same is in breach of the constitutional obligations as enshrined in Article 22(5) of the Constitution of India.

7. In my opinion, the aforesaid decision of the apex Court would squarely apply to the facts of the present case. Suffice it to say that the time taken in considering the representation has not been properly explained in any of the affidavits. Therefore, consequently, the action of the respondents is unconstitutional. In view of this, the detention of the detenu is required to be declared as illegal.

8. In the result, this petition is allowed. The impugned order of detention passed against the detenu is set aside. Rule is made absolute. The detenu to be released forthwith if not required for any other purpose.

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